

Message Text

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ACTION STR-04

INFO OCT-01 AF-10 ARA-06 EA-07 EUR-12 NEA-10 IO-13

ISO-00 STRE-00 AGRE-00 CEA-01 CIAE-00 COME-00

DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05 SS-15

ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00

OMB-01 OIC-02 /135 W

-----201753Z 106572 /41

R 201740Z MAY 77

FM USDEL MTN GENEVA

TO SECSTATE WASHDC 2477

INFO AMEMBASSY OTTAWA

USMISSION EC BRUSSELS

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 MTN GENEVA 3975

ACTION STR (POMERANZ)

H PASS CODEL

EO 11652: NA

TAGS: ETRD, OCON, MTN

SUBJ: GOVERNMENT PROCUREMENT: REACTION TO CANADIAN DRAFT

BY OTHER DELEGATIONS AS SEEN BY CANADIANS

REF: USMTN DEL 3680

1. SUMMARY: US MTN DEL MET WITH CANADIANS TO DISCUSS REACTIONS OF OTHER COUNTRIES TO CANADIAN DRAFT ON GOVERNMENT PROCUREMENT. CANADIAN DEL (CLARK) INDICATED THAT HE WAS "QUITE SATISFIED" WITH REACTIONS THAT HAD BEEN RECEIVED FROM OTHER DELEGATION AND THAT HE HAD NOT EXPECTED DIFFERENCES OF OPINION TO BEGIN NARROWING SO SOON. ON THE BASIS OF HIS CONSULTATIONS, CLARK HAS DECIDED NOT TO TABLE ANY DRAFTS THIS SPRING, BUT ANTICIPATES PLURI-LIMITED OFFICIAL USE

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LATERAL DRAFTING SESSIONS WITH INTERESTED DEVELOPED COUNTRIES. IDEALLY, THESE SESSIONS WOULD COME UP WITH A DRAFT TEXT THAT COULD BE TABLED IN THE FALL. END SUMMARY.

2. AT CANADIAN INVITATION, US MTN DEL (NEWKIRK) RECEIVED BRIEFING ON REACTIONS BY OTHER DEVELOPED COUNTRIES TO CANADIAN DRAFT GOVERNMENT PROCUREMENT PROPOSAL. CANADIAN DEL INDICATED

THAT THEY WERE PLEASANTLY SURPRISED BY THE FAVORABLE REACTION FROM ALL DEVELOPED COUNTRIES WITH WHOM THEY HAVE SPOKEN. (EC, SWISS, JAPAN, US) GENERAL REACTION WAS UNIFORM THAT CANADIANS HAD DONE A VERY GOOD TECHNICAL DRAFTING JOB, BUT IN SUBSTANTIVE AREAS, VARIOUS COUNTRIES CITED THEIR PREVIOUS POSITIONS. CANADIAN DEL NOW INTENDS TO MODIFY THEIR DRAFTS, TAKING INTO ACCOUNT THE COMMENTS WHICH HAVE BEEN RECEIVED. AFTER THE SUB-GROUP MEETING, THE CANADIANS WOULD LIKE TO BEGIN A SERIES OF PLURILATERAL DISCUSSIONS BETWEEN THE US, EC, JAPAN, NORDICS AND SWISS TO ATTEMPT TO COME TO SOME CONSENSUS ON DRAFT LANGUAGE FOR EACH OF THE MAJOR AREAS OF CONCERN IN GOVERNMENT PROCUREMENT. ONCE TEXTS HAVE BEEN DEVELOPED, GATT SEC WOULD BE ASKED TO PUT THEM TOGETHER IN A DRAFT CODE. CLARK STATED THAT THE EC, JAPANESE, AND SWISS SAW NO DIFFICULTY IN PROCEEDING IN THIS MANNER. (FYI - NORDICS HAVE TOLD US PRIVATELY THAT THEY WILL BE CO-ORDINATING IN STOCKHOLM MAY 27 TO DEVELOP COMMON POSITION ON HOW TO PROCEED. AT THE MOMENT, HOWEVER, THEY TOO FEEL IT WOULD BE PREMATURE TO CIRCULATE THE CANADIAN DRAFT. END FYI).

3. THE CANADIAN PLAN IS TO HOLD A SERIES OF MEETINGS ON EACH OF THE MAIN TOPIC AREAS, PERHAPS STARTING WITH SUBJECTS ON WHICH THERE IS NOT MAJOR DISAGREEMENT, SUCH AS OBJECTIVES, NON-DISCRIMINATION, MFN, AND TECHNICAL SPECIFICATIONS. LATER, THERE WOULD BE A SECOND SERIES OF MEETINGS ON THE MORE DIFFICULT AREAS SUCH AS SCOPE AND COVERAGE, TENDERING PROCEDURES, AND EX-POST PUBLICITY. THEY WOULD ANTICIPATE BRINGING IN THE LDCS ONLY AFTER SOME DEGREE OF DC CONSENSUS LIMITED OFFICIAL USE

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IS REACHED, WHILE CONTINUING DISCUSSION OF THE ISSUES IN THE GP SUBGROUP. THE CANADIANS HOPE THIS PROCEDURE WOULD DEAL WITH THE PROBLEM OF SEVERAL EXISTING TEXTS (I.E. OECD CANADIAN, EC DIRECTIVE) WHILE PROVIDING AN OPPORTUNITY FOR THE MTN SUBGROUP TO DEVELOP A TEXT THAT IS NOT STRICTLY A DEVELOPED COUNTRY DOCUMENT.

4. SUBSTANTIVELY, CLARK GAVE THE FOLLOWING COUNTRY-BY-COUNTRY REPORT ON REACTIONS TO THEIR DRAFT: JAPAN - THE JAPANESE REACTION WAS BASED ON STANDING INSTRUCTIONS SINCE THEY HAVE YET TO RECEIVE REACTIONS FROM TOKYO TO THE CANADIAN DRAFT. THE JAPANESE DEL (TERADA) FOCUSED FIRST ON THE ENTITY LANGUAGE AND PARTICULARLY THAT RELATING TO THE DIRECT AND "SUBSTANTIAL" ENTITY CONTROL LANGUAGE. THEY SEE THE WORD "SUBSTANTIAL" AS BEING TOO VAGUE AND INCLUSIVE, SINCE THE GOJ, IN THE FIRST INSTANCE, COULD ONLY INCLUDE BODIES UNDER THE DIRECT CONTROL OF THE NATIONAL GOVERNMENT IN THE ENTITY COVERAGE. CLARK ALSO INDICATED THAT THE

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INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01

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AID-05 SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02

FEAE-00 OMB-01 OIC-02 AF-10 ARA-06 EA-07 NEA-10

/135 W

-----201818Z 106691 /50

R 201705Z MAY 77

FM USDEL MTN GENEVA

TO SECSTATE WASHDC 2478

INFO AMEMBASSY OTTAWA

USMISSION EC BRUSSELS

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ACTION STR (POMERANZ)

H PASS CODEL

JAPANESE HAD PROBLEMS WITH THE BEST ENDEAVORS PORTION OF THE CANADIAN DRAFT AND ALSO WITH THE CITATIONS OF GATT ARTICLES 1 AND 3 IN THE NONDISCRIMINATION SECTION. HE STATED THAT THE JAPANESE ACCEPTED THE CONCEPT OF NATIONAL TREATMENT, AND HAD FEW PROBLEMS WITH THE SECTION ON TENDERING PROCEDURES. WITH REGARD TO SINGLE TENDERING THE JAPANESE EXPRESSED CONCERN ABOUT NATIONAL SECURITY PURCHASES AND HIGH TECHNOLOGY INDUSTRIES. REGARDING THE PUBLICATION OF BIDS, THE JAPANESE QUESTIONED NECESSITY OF THE REQUIREMENT TO PUBLISH ON A MONTHLY BASIS THE AWARD OF CONTRACTS, SINCE THIS MIGHT HINDER THEIR PRACTICE OF PUBLISHING BIDS DAILY. OTHER THAN THIS RATHER MINOR PROBLEM, TERADA OPINED THAT THE EX-POST PUBLICITY PROVISIONS WOULD BE GENERALLY ACCEPTABLE.

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5 THE CANADIAN DEL STATED THAT THE REACTIONS OF THE SWISS AND THE EC DELS WERE BASICALLY SIMILAR. THE PRIMARY PROBLEM FOR THE SWISS CONCERNED THE EX-POST PUBLICITY PROVISIONS. CLARK STATED THAT THE SWISS, LIKE THE EC, HAD ACCEPTED THAT GOVERNMENT-TO-GOVERNMENT INFORMATION COULD BE PROVIDED AS LONG AS IT WAS MAINTAINED ON A CONFIDENTIAL BASIS. THEY REMAINED OPPOSED TO GOVERNMENT/FIRM DISCLOSURES. CLARK INTERPRETED THIS TO MEAN THAT GOVERNMENTS WOULD HAVE ACCESS TO ALL NECESSARY INFORMATION, BUT WOULD BE COMPELLED TO WITHHOLD SUCH INFORMATION FROM PRIVATE COMPANIES. THE GOVERNMENTS WOULD USE THIS INFORMATION TO COMPARE IT TO DATA GATHERED FROM DOMESTIC COMPANIES, AND DETERMINE WHETHER TO TRIGGER THE DISPUTE SETTLEMENT PROCEDURES.

6. THE EC ALSO MENTIONED TO CLARK A NEW THREE-STEP APPROACH TO THE THRESHOLD QUESTION. UNDER THIS APPROACH, ALL CONTRACTS ABOVE A CERTAIN LEVEL (THE EC USED \$200,000 AS AN EXAMPLE) WOULD BE SUBJECT TO THE FULL PROVISIONS OF THE CODE. CONTRACTS IN A LOWER RANGE, SAY \$100,000 TO \$200,000, WOULD ALSO BE SUBJECT TO THE PROVISIONS OF THE CODE, EXCEPT THOSE PROVISIONS REQUIRING PRIOR PUBLICATION FOR SOLICITATION OF BIDS. THE RATIONALE FOR WAIVING THE PUBLICATION PROVISIONS IS AN UNACCEPTABLE ADMINISTRATIVE BURDEN. CONTRACTS BELOW THIS LOWER RANGE WOULD BE SUBJECT ONLY TO NON-DISCRIMINATION REQUIREMENTS. CLARK STATED THAT THE EC (DERISBOURG) POINTED OUT THAT THE NONDISCRIMINATION PROVISION IN ARTICLE 7 OF THE TREATY OF ROME DOES NOT HAVE A MINIMUM THRESHOLD FOR APPLICATION OF THE NONDISCRIMINATION. BOTH THE EC AND SWISS OBJECTED TO CITATION OF SPECIFIC GATT ARTICLES. THE EC AND SWISS ALSO FELT THAT AT THE TIME A PAPER CIRCULATED, IT SHOULD CONTAIN PROVISIONS FOR SPECIAL AND DIFFERENTIAL TREATMENT. THEY ALSO MENTIONED THEIR CONCERN ABOUT NONDISCRIMINATION AND CUSTOMS UNIONS/FREE TRADE AREAS.

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7. WITH REGARD TO WORK IN THE OECD, CLARK REITERATED CANADIAN OBJECTIONS TO THIS FORUM FOR NEGOTIATING GOVERNMENT PROCUREMENT. HE ALSO STATED THAT THE JAPANESE HAD TOLD HIM THAT THE EC HAD NOW "ABANDONED" THEIR IDEA OF RETURNING TO THE OECD WORKING PARTY. (THIS STATEMENT IS RATHER MORE DEFINITIVE THAN WHAT THE EC TOLD THE US MTN DEL REFTEL).

8. FINALLY, CLARK STATED THAT ALL DELS WITH WHOM HE HAD SPOKEN CAUTIONED AGAINST EARLY TABLING OF THE CANADIAN DRAFT. THEY FURTHER URGED THAT EFFORTS SHOULD BE MADE TO DEVELOP A DC CONSENSUS FIRST, AS A RESULT OF THIS

ADVICE, THE CANADIANS DO NOT PLAN TO TABLE ANY PAPERS BEFORE THE JUNE GOVERNMENT PROCUREMENT MEETING. THEY MAY MAKE A STATEMENT THAT THEY ARE WORKING ON A DRAFT AND HOPE TO HAVE SOMETHING AVAILABLE BY THE FALL. CLARK HOPES, HOWEVER, THAT THE PAPER FOR THE FALL WILL NOT BE A "CANADIAN" PROPOSAL, BUT RATHER A CONSENSUS PAPER THAT TAKES BOTH DC AND LDC VIEWS INTO ACCOUNT AND A PAPER SUITABLE FOR USE AS A NEGOTIATING DOCUMENT. CULBERT

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT PROCUREMENT, RESOLUTIONS, DIPLOMATIC DISCUSSIONS, GOVERNMENT REACTIONS, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Sent Date: 20-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977MTNGE03975
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770180-0691
Format: TEL
From: MTN GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770536/aaaabenm.tel
Line Count: 232
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ee20408f-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 27-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2437274
Secure: OPEN
Status: NATIVE
Subject: GOVERNMENT PROCUREMENT: REACTION TO CANADIAN DRAFT BY OTHER DELEGATIONS AS SEEN BY CANADIANS
TAGS: ETRD, OCON, CA, US, MTN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/ee20408f-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009